

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:14-CV-954**

**STUDENTS FOR FAIR ADMISSIONS,
INC.,**

Plaintiff,

v.

**UNIVERSITY OF NORTH CAROLINA et
al.,**

Defendants.

**PLAINTIFF'S MOTION TO EXCLUDE
LATE-DESIGNATED WITNESSES AND
LATE-PRODUCED DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 37, Plaintiff Students for Fair Admissions, Inc. ("SFFA") respectfully files moves to exclude three fact witnesses disclosed and five documents produced on July 13, 2018—more than a full year after the close of fact discovery—and to limit the testimony of a fourth fact witness to matters disclosed during the fact discovery period.

The default remedy for such late disclosures is exclusion of the witnesses and documents from the case entirely. *See Syngenta Crop Prot., LLC v. Willowood, LLC*, 2017 WL 3309699, at *1 (M.D.N.C. Aug. 2, 2017). The burden rests with the party facing exclusion “for belated disclosure to show

that its failure to comply with [the Federal Rules] was either justified or harmless.” *S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003) (quotation omitted). UNC cannot meet its burden.

For the reasons stated in the accompanying brief, SFFA respectfully requests that this Court grant SFFA’s motion.

Respectfully submitted,

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Attorneys for Plaintiffs

Dated: August 3, 2018

L.R. 37.1 Certificate

The undersigned hereby certifies that this motion was filed only after personal consultation and diligent attempts to resolve the differences. Specifically, counsel for the parties met and conferred about the disputed issues on or about July 19, 2018 (with follow-up email communications on July 20 and July 31, 2018). The parties were able to narrow their differences to some extent; the differences that remain are the subject of this motion. Participants in the teleconference included Marianne Combs and Stephanie Brennan for UNC and Patrick Strawbridge for SFFA.

/s/ Thomas R. McCarthy
Thomas R. McCarthy

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing pleading via the Court's electronic filing system, pursuant to the Electronic Filing Procedures, on all attorneys of record who have entered an appearance by ECF in this matter.

This the 3rd day of August, 2018.

/s/ Thomas R. McCarthy
Thomas R. McCarthy